

Jane Robinson,
Mary Robinson,
Charles Robinson,

Appellants.

Jonathan Fugill, Respondent.

The Appellants C A S E.

Justinian Angell, being seized of one or more Light-houses, at or near the Spurn Point, at the Mouth of the River Humber in York-shire, and of several Duties payable for the same, by Indenture, dated on or about the 7th of August, Anno 1678, granted to William Fugill (the Respondent's Father) and to his Heirs, a Rent-charge of 50 *l. per annum*, payable out of the said Duties, and in October following the said William Fugill died, whereby the Respondent became seized of the said Rent-charge.

That in October, 1679, the said Justinian Angell died, and the said Light-house and Duties descended to John Angell, his Son and Heir.

That on the 8th of January, 1697, the Appellant, Jane Robinson, lent the Respondent the Sum of 100 *l.* and to secure the Repayment thereof with Interest, the Respondent, by Indenture of that date, conveyed the said Rent-charge to the said Appellant Jane, and to her Heirs, under a *Proviso* to be void on Payment of 3 *l.* on the 14th day of July then next, and 103 *l.* on the 14th of January, Anno (98.)

That on the 4th of February, Anno 1697, the Appellant, Mary Robinson, lent the Respondent the Sum of 50 *l.* and to secure the Repayment thereof with Interest, by Indenture, dated the said 4th of February, the Respondent conveyed the Equity of Redemption of the said Premises to the Appellant, Mary Robinson, and her Heirs, under a *Proviso* to be void on Payment of 53 *l.* to the said Appellant on the 4th of February, 1698.

That the Respondent, in consideration of 300 *l.* by Indenture dated the 18 day of February, Anno 1700, conveyed the said Premises to one Robert Newton and his Heirs; out of which said Sum of 300 *l.* Newton was to pay the Appellants absolute Jane and Mary Robinson, their Principal and Interest, and deduct a Debt due to himself of 50 *l.* and the residue he was to pay the Respondent for the Purchase of the said Premises.

That Newton could not raise Money to proceed in the said Purchase, and thereupon the Appellant, Charles Robinson, on the 22d of May, 1701, by the direction of the Respondent, paid to the said Newton the said Debt of 50 *l.* And thereupon the said Newton, in consideration of the said 50 *l.* paid him and the Respondent, in consideration of one Guinea, paid him by the Appellant, Charles Robinson, by Indenture, dated on the said 22d day of May, the said Newton and the Respondent conveyed the said Premises to the Appellant, Charles Robinson, and his Heirs, and all their Right and Equity of Redemption, of, in, and unto the same.

That on the said 22d of May, the Appellant, Charles Robinson, lent the Respondent another Sum of 84 *l. 4 s. 6 d.* And thereupon the Respondent, by another Indenture, dated the said 22d of May, conveyed the said Premises to the said Charles Robinson and his Heirs.

That the Respondent never repaid any of the said Sums to the said Appellants, or to any of them.

That there arising a Dispute between the Respondent and the said John Angell, touching the Validity of the said Deed of the 7th of August, 1678, and the said Angell refusing to pay the said Rent-charge, the Respondent brought his Bill in the Court of Exchequer, as against the Appellants, to redeem the said Premises; and to compel the said Angell to pay the said Rent-charge: And thereby suggested, That the said several Sums of Money lent him by the Appellants, were the proper Money of the said Angell; and that the Appellants were only Trustees for Angell. And therefore prayed, That the several Mortgages might be paid off by the Arrears of the said Annuity.

To which Bill the Appellants put in their several Answers, and positively denied, that the several Sums of Money, or any Part thereof, lent by them to the Respondent, was the proper Money of the said Angell; or that their Names were used in Trust for the said Angell.

That Issue being joyned, and Witnesses examined, this Cause was heard on the 25th of June, 1706, at which time the Respondent produced a Parchment-Writing, which he pretended was the Original Deed of Grant of the said Rent-charge from the said Justinian Angell to the Respondent's Father, though the Respondent had long before delivered to the Appellants a Paper-Writing, as the Original Grant, which the Appellants then produced in Court; the Defendant Angell insisted, that his said Father never executed either of the said Deeds.

Whereupon an Order was pronounced, whereby a Trial at Law was directed, to try whether a Deed of Grant of a Rent-charge of 50 *l. per Annum*, issuing out of the said Lights, was made and executed by the said Justinian Angell, to the Respondent's Father and his Heirs: And if such Deed was executed, then whether the Parchment-Deed or Paper-Deed was such Deed, and both the Deeds were to have been produced on the Trial at Law.

That afterwards the Respondent obtained an Order for Re-hearing the said Cause, upon Pretence that he had lost the said Parchment-Deed: And the same was Re-heard on the 15th of May last; And on the Respondent's making Oath in Court, That he did not know where the said Parchment-Deed was, the Court then ordered that a Trial at Law should be had between the Respondent and the said Angell upon these Issues, (*viz.*)

First, Whether the said Justinian Angell did ever execute a Grant of a Rent-Charge of 50 *l. per Annum*, issuing out of the said Lights to the Respondent's said Father, and his Heirs.

Secondly, Whether the Paper-Writing produced by the Appellants was the Deed; and the Appellants were ordered to produce the said Paper-Writing at such Trial.

From which Decree the Appellants have humbly appealed to your Lordships, and hope that the said Decree shall be reversed for the Reasons following:

First, For that it appears both by the Bill and Answer, that the Appellants did really, and *bona fide* lend and advance the Respondent the several Sums aforesaid, and ought to be paid what is due to them, and not to be put to any Hazard by a Trial at Law, for thereby they may be in Danger of losing their several Debts: And all Courts are so careful of Purchasers, that they never oblige them to produce their Title, lest it should be imperfect. And the Appellants are Purchasers for what they lent or advanced, and therefore are within that Rule.

2dly, The Trial at Law will give the Respondent an Opportunity to try whether he hath put a bad Security on the Appellants, and thereby defrauded the Appellants of their Money (this being their only Security) which never yet was permitted.

3dly, By this Decree the Appellants will be forced, at a vast Expence, to bring their Witnesses to prove the Deed, above 140 Miles, they living in York-shire, to London; or else the Respondent may suffer a Verdict to pass against the Deed, and has an Opportunity to take a Sum of Money of Angell so to do, and so the Appellants left to get their Money of a Pauper as they can: And at the best, after all Hazards and Expence, the Appellants can have only the Money again they lent with Interest, and the Advantage (if any) will be to the Respondent, which is to be tried at their Expence; And besides the Rent-charge, issuing out of precarious Duties, the same will not re-pay them what is due with their Charges; the Respondent having sold the same to Newton for 300 *l.* as aforesaid.

4thly, It's plain, The Respondent has not been fair in this Matter, for either the Parchment-Writing which he produced, as the Original Deed of Grant, or the Paper-Deed which he delivered to the Appellants as the Original Deed of Grant, must be an *Ill-Deed*, (to give it no worse Name:) And therefore it would be hard to force the Appellants to a Trial to know whether they shall be re-paid or not, under these Disadvantages brought on them by the Respondent himself, and more especially, since it can be no Detriment to the Respondent to pay the Appellants what is due to them, and then he may proceed as he pleases. The Appellants being ready to assign their Mortgages and Estates in the Premises to the Respondent or his Friends, free from all Incumbrances whatsoever by them done, and so the Respondent cannot be injured, but as the Decree now stands, the Appellants may: And therefore the Appellants hope that the said Decree shall be reversed.

Law. Carter.